

## Rural Utilities Service, USDA

## § 1744.21

### § 1744.21 Definitions.

The following definitions apply to this subpart:

*Administrator* means the Administrator of RUS and includes the Governor of the RTB.

*Advance* means transferring funds from RUS, RTB, or a lender guaranteed by RUS to the borrower's construction fund.

*After-acquired property* means property which is to be acquired by the borrower and which would be subject to the lien of the Government mortgage when acquired.

*Amortization expense* means the sum of the balances of the following accounts of the borrower:

| Account names                             | Number |
|---|--------|
| (1) Amortization expense .....            | 6560.2 |
| (2) Amortization expense—tangible .....   | 6563   |
| (3) Amortization expense—intangible ..... | 6564   |
| (4) Amortization expense—other .....      | 6565   |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Asset* means a future economic benefit obtained or controlled by the borrower as a result of past transactions or events.

*Automatic lien accommodation* means the approval, by RUS, of a request to share the Government's lien on a pari passu or pro-rata basis with a private lender in accordance with the provisions of §1744.30.

*Borrower* means any organization that has an outstanding telecommunications loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

*Construction Fund* means the RUS Construction Fund Account into which all advances of loan funds are deposited pursuant to the provisions of the loan documents.

*Debt Service Coverage (DSC) ratio* means the ratio of the sum of the borrower's net income, depreciation and amortization expense, and interest expense, all divided by the sum of all payments of principal and interest required to be paid by the borrower during the year on all its debt from any source with a maturity greater than 1 year and capital lease obligations.

*Default* means any event or occurrence which, unless corrected, will,

with the passage of time and the giving of proper notices, give rise to remedies under one or more of the loan documents.

*Depreciation expense* means the sum of the balances of the following accounts of the borrower:

| Account names  | Number |
|--|--------|
| (1) Depreciation expense .....   | 6560.1 |
| (2) Depreciation expense—telecommunications plant in service .....             | 6561   |
| (3) Depreciation expense—property held for future telecommunications use ..... | 6562   |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Disbursement* means a transfer of money by the borrower out of the construction fund in accordance with the provisions of the fund.

*Equity percentage* means the total equity or net worth of the borrower expressed as a percentage of the borrower's total assets.

*FFB* means the Federal Financing Bank.

*Financial Requirement Statement (FRS)* means RUS Form 481 (OMB—No. 0572—0023). (This RUS Form is available from RUS, Program Development and Regulatory Analysis, Washington, DC 20250—1522).

*Government mortgage* means any instrument to which the Government, acting through the Administrator, is a party and which creates a lien or security interest in the borrower's property in connection with a loan made or guaranteed by RUS whether the Government is the sole mortgagee or is a co-mortgagee with a private lender.

*Hardship loan* means a loan made by RUS under section 305(d)(1) of the RE Act.

*Interim construction* means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

*Interest expense* means the sum of the balances of the following accounts of the borrower:

| Account names                                   | Number |
|---|--------|
| (1) Interest and related items .....            | 7500   |
| (2) Interest on funded debt .....               | 7510   |
| (3) Interest expense—capital leases .....       | 7520   |
| (4) Amortization of debt issuance expense ..... | 7530   |

## § 1744.21

| Account names   | Number          |
|---|-----------------|
| (5) Less Allowance for funds used during construction ..... | 7340/<br>7300.4 |
| (6) Other interest deductions .....                         | 7540            |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Interim financing* means funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS loan funds have not yet been made available.

*Lien accommodation* means sharing the Government's lien on a pari passu or pro-rata basis with a private lender.

*Loan* means any loan made or guaranteed by RUS.

*Loan documents* means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

*Loan funds* means the proceeds of a loan made or guaranteed by RUS.

*Material and supplies* means any of the items properly recordable in the following account of the borrower:

| Account names                   | Number |
|---------------------------------|--------|
| (1) Material and Supplies ..... | 1220.1 |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Net income/Net margins* means the sum of the balances of the following accounts of the borrower:

| Account names                                    | Number                       |
|--|------------------------------|
| (1) Local Network Services Revenues ..           | 5000 through 5069            |
| (2) Network Access Services Revenues ..          | 5080 through 5084            |
| (3) Long Distance Network Services Revenues ..   | 5100 through 5169            |
| (4) Miscellaneous Revenues .....                 | 5200 through 5270            |
| (5) Nonregulated Revenues .....                  | 5280                         |
| (6) Less Uncollectible Revenues .....            | 5200 through 5302            |
| (7) Less Plant Specific Operations Expense ..    | 6110 through 6441            |
| (8) Less Plant Nonspecific Operations Expense .. | 6510 through 6565            |
| (9) Less Customer Operations Expense ..          | 6610 through 6623            |
| (10) Less Corporate Operations Expense ..        | 6710 through 6790            |
| (11) Other Operating Income and Expense ..       | 7100 through 7160            |
| (12) Less Operating Taxes .....                  | 7200 through 7250/<br>7200.5 |
| (13) Nonoperating Income and Expense ..          | 7300 through 7370            |
| (14) Less Nonoperating Taxes .....               | 7400 through 7450/<br>7400.5 |
| (15) Less Interest and Related Items ....        | 7500 through 7540            |
| (16) Extraordinary Items .....                   | 7600 through 7640/<br>7600.4 |

## 7 CFR Ch. XVII (1-1-05 Edition)

| Account names   | Number            |
|---|-------------------|
| (17) Jurisdictional Differences and Non-regulated Income Items. | 7910 through 7990 |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Net plant* means the sum of the balances of the following accounts of the borrower:

| Account names                             | Number            |
|---|-------------------|
| (1) Property, Plant and Equipment .....   | 2001 through 2007 |
| (2) Less Depreciation and Amortization .. | 3100 through 3600 |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Notes* means evidence of indebtedness secured by or to be secured by the Government mortgage.

*Pari Passu* means equably; ratably; without preference or precedence.

*Plant* means any of the items properly recordable in the following accounts of the borrower:

| Account names                           | Number            |
|---|-------------------|
| (1) Property, Plant and Equipment ..... | 2001 through 2007 |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Private lender* means any lender other than the RUS or the lender of a loan guaranteed by RUS.

*Private lender notes* means the notes evidencing a private loan.

*Private loan* means any loan made by a private lender.

*RE Act (Act)* means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) RTB means the Rural Telephone Bank.

*RUS* means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration. The term also includes the RTB, unless otherwise indicated.

*RUS cost-of-money loan* means a loan made under section 305(d)(2) of the RE Act.

*Subordination* means allowing a private lender to have a lien on specific property which will have priority over the Government's lien on such property.

*Tangible plant* means any of the items properly recordable in the following accounts of the borrower:

## Rural Utilities Service, USDA

**§ 1744.21**

| Account names   | Number            |
|---|-------------------|
| (1) Telecommunications Plant in Service—General Support Assets.                     | 2110 through 2124 |
| (2) Telecommunications Plant in Service—Central Office Assets.                      | 2210 through 2232 |
| (3) Telecommunications Plant in Service—Information Origination/Termination Assets. | 2310 through 2362 |
| (4) Telecommunications Plant in Service—Cable and Wire Facilities Assets.           | 2410 through 2441 |
| (5) Amortizable Tangible Assets .....   | 2680 through 2682 |
| (6) Nonoperating Plant .....  | 2006              |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Telecommunication services* means any service for the transmission, emission, or reception of signals, sounds, information, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

*Times interest earned ratio (TIER)* means the ratio of the borrower's net income or net margins plus interest expense, divided by said interest expense.

*Total assets* means the sum of the balances of the following accounts of the borrower:

| Account names                            | Number              |
|--|---------------------|
| (1) Current Assets .....                 | 1100s through 1300s |
| (2) Noncurrent Assets .....              | 1400s through 1500s |
| (3) Total telecommunications plant ..... | 2001 through 2007   |
| (4) Less accumulated depreciation .....  | 3100 through 3300s  |
| (5) Less accumulated amortization .....  | 3400 through 3600s  |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Total equity or net worth* means the excess of a borrower's total assets over its total liabilities.

*Total liabilities* means the sum of the balances of the following accounts of the borrower:

| Account names                               | Number              |
|---|---------------------|
| (1) Current Liabilities .....               | 4010 through 4130.2 |
| (2) Long-Term Debt .....                    | 4210 through 4270.3 |
| (3) Other Liabilities and Deferred Credits. | 4310 through 4370   |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Total long-term debt* means the sum of the balances of the following accounts of the borrower:

| Account names            | Number              |
|--------------------------|---------------------|
| (1) Long-Term Debt ..... | 4210 through 4270.3 |

NOTE: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

*Weighted-average life of the loans or notes* means the average life of the loans or notes based on the proportion of original loan principal paid during each year of the loans or notes. It shall be determined by calculating the sum of all loan or note principal payments expressed as a fraction of the original loan or note principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan or note. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted-average life would be:  $(.2)(1 \text{ year}) + (.2)(2 \text{ years}) + (.2)(3 \text{ years}) + (.2)(4 \text{ years}) + (.2)(5 \text{ years}) = .2 \text{ years} + .4 \text{ years} + .6 \text{ years} + .8 \text{ years} + 1.0 \text{ years} = 3.0 \text{ years}$ . If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted-average life would be:  $(\$5 \text{ million}/\$5 \text{ million})(5 \text{ years}) = 5 \text{ years}$ .

*Weighted-average remaining life of the loans or notes* means the remaining average life of the loans or notes based on the proportion of remaining loan or note principal expressed in years remaining to maturity of the loans or notes. It shall be determined by calculating the sum of the remaining principal payments of each loan or note expressed as a fraction of the total remaining loan or note amounts times the number of years and fraction of years remaining until maturity of the loan or note.

*Weighted-average remaining useful life of the assets* means the estimated original average life of the assets to be acquired with the proceeds of the private lender notes expressed in years based on depreciation rates less the number

of years those assets have been in service (or have been depreciated). It shall be determined by calculating the sum of each asset's remaining value expressed as a fraction of the total remaining value of the assets, times the estimated number of years and fraction of years remaining until the assets are fully depreciated.

*Wholly-owned subsidiary* means a corporation owned 100 percent by the borrower.

[66 FR 41758, Aug. 9, 2001]

**§§ 1744.22–1744.29 [Reserved]**

**§ 1744.30 Automatic lien accommodations.**

(a) *Purposes and requirements for approval.* Automatic lien accommodations are available only for refinancing and refunding of notes secured by the borrower's existing Government mortgage; financing assets, to be owned by the borrower, to provide telecommunications services; or financing assets, to be owned by a wholly-owned subsidiary of the borrower, to provide telecommunications services in accordance with the procedures set forth in this section.

(b) *Private lender responsibility.* The private lender is responsible for ensuring that its notes, for which an automatic lien accommodation has been approved as set forth in this section, are secured under the mortgage. The private lender is responsible for ensuring that the supplemental mortgage is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional documents are required or that RUS must take additional actions to secure the notes under the mortgage, the private lender shall follow the procedures set forth in § 1744.40 or § 1744.50, as appropriate.

(c) *Refinancing and refunding.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a *pari passu* or *pro-rata* basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of refinancing or refunding any notes secured under the Government mort-

gage, provided that all of the following conditions are met:

(1) No default has occurred and is continuing under the Government mortgage;

(2) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form set forth in Appendix A of this subpart, providing that:

(i) No default has occurred and is continuing under the Government mortgage;

(ii) The principal amount of such refinancing or refunding notes will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded;

(iii) The weighted-average life of the private loan evidenced by the private lender notes will not exceed the weighted-average remaining life of the notes being refinanced or refunded;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(vi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(d) *Financing assets to be owned directly by a borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a *pari passu* or *pro-rata* basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of plant and material and supplies to provide telecommunication services